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USPTO FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Examiner Qamrun Nahar	James E. Boice, Reg. No. 44,545

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NOTES/COMMENTS:

8911 N. CAPITAL OF TEXAS HWY., SUITE 2110, AUSTIN, TEXAS 78759
512.343.6116 (V) • 512.343.6446 (F) • DILLONYUDELL.COM

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY. DOCKET NO.:   RPS920000117US1

In re Application of:	§	
	§	
WILLIAM JOSEPH PIAZZA	§	Examiner: **QAMRUN NAHAR**
	§	
Serial No.: 09/918,132	§	
	§	
Filed: **30 JULY 2001**	§	Art Unit: 2124
	§	
For: **METHOD AND SYSTEM FOR**	§	
IDENTIFYING	§	
COMPATIBILITY BETWEEN	§	
FIRMWARE IMAGES	§	
	§	
	§	
	§	

AMENDED APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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Commissioner for Patents
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Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in response to the September 23, 2005 Notification of non-Compliant Appeal Brief, and in support of the Appeal of the Examiner's final rejection of Claim 1 in the above-identified application. A Notice of Appeal was filed in this case on April 28, 2005 and received in the United States Patent and Trademark Office on April 28, 2005. No additional fees are believed due at this time for this appeal. However, if such fees are due, please charge them, as well as any additional required fees, to IBM Deposit Account No. 50-0563.

CERTIFICATE OF FACSIMILE TRANSMISSION
37 C.F.R. 1.8(a)

I hereby certify that this correspondence is being transmitted by facsimile on the below date to the United States Patent and Trademark Office addressed to Examiner Qamrun Nahar, Group Art Unit 2124 at (571) 273-8300.

10-11-05	
Date	Signature of Sherise Ramdeen

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REAL PARTY IN INTEREST

The real party in interest in the present Application is International Business Machines Corporation, the Assignee of the present application.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, the Appellants' legal representative, or assignee, which directly affect or would be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-52 were originally presented. Claims 1, 12, 16, 19, 20 and 31 were amended in Appellants' Amendment A filed on November 24, 2004. Claims 1-52 stand finally rejected by the Examiner as noted in the Final Office Action dated March 1, 2005. The rejection of Claim 1 is appealed.

STATUS OF AMENDMENTS

The amendments filed on November 24, 2004 have been entered. No new amendments have been proposed after the March 1, 2005 Final Office Action.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention recited in exemplary Claim 1 provides a method for determining if two firmware images are compatible according to their firmware family codes. If the two firmware family codes are the same, then the firmware images are assumed to be compatible. If the two firmware image family codes are different, then the firmware images are assumed to be incompatible, unless a compatibility table entry indicates otherwise. (See also, *inter alia*, page 6, lines 3-14, as well as elements 320 and 330 in Figure 3 and elements 430, 440 and 445 in Figure 4 of the present invention's specification.)

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The Examiner's rejection of Claim 1 under 35 U.S.C. §102(e) as being anticipated by *Kathail* (U.S. Patent No. 5,802,365 – "*Kathail*") is to be reviewed on Appeal.

ARGUMENT

A.   The rejection of Claim 1 under 35 U.S.C. §102(e) as being anticipated by *Kathail* (U.S. Patent No. 5,802,365 – "*Kathail*")

Kathail does not teach all of the claim limitations of the present invention, and thus the rejection of Claim 1 should be reversed.

Kathail describes a method for automatically correlating a device to its appropriate driver. If the device does not already have a driver, then a candidate list of drivers is provided. Each driver from the list is sequentially tried until a driver is found that does not cause an error. (*Kathail* abstract.) A device in a device tree is automatically matched up with its appropriate driver according to the device's name (*Kathail*, col.7, lines 57-59). If the new device does not have a name, then a pseudo-name is made up for it (*Kathail*, col. 8, lines 19-22). A driver description for the driver then helps a device manager pick the best driver among multiple candidates (*Kathail*, col. 8, lines 64-66). Thus, replacing a driver is a simple two-step process of 1) the driver to be replaced giving up control of the device and 2) installing the new driver (*Kathail*, col. 17, lines 57-62). If two drivers are available, then the most recent version is chosen (*Kathail*, col. 36, lines 12-13). Thus, the device asks 1) is there a driver available and 2) where is the most current version of the driver (*Kathail*, col. 42, lines 45-47)?

It is axiomatic that anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention (citations omitted). *Kathail* does not disclose each claimed feature.

Specifically, with reference to exemplary Claim 1, *Kathail* does not teach or suggest "determining if said firmware images are compatible." *Kathail* never addresses the issue or

whether two firmware images are compatible, but rather is focused only on whether a driver (firmware) is compatible with a hardware device.
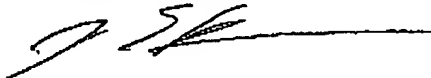
Furthermore, *Kathail* never teaches or suggests "compatibility tables" that are to be used in the event that two firmware images are from different families. That is, *Kathail* never teaches or suggests "evaluating said compatibility tables to determine if said firmware images are compatible in response to said determination that said firmware family codes of said firmware images are not the same, wherein each of said compatibility tables describes the a relationship between an associated firmware image and other family codes."

Appellants therefore request that the rejection of Claim 1 be reversed.

CONCLUSION

As the prior art cited does not teach or suggest all of the features of the presently claimed invention, Appellants respectfully request that the rejection of Claim 1 be reversed.

Respectfully submitted,

James B. Boice
Registration No. 44,545
DILLON & YUDELL LLP
8911 North Capital of Texas Hwy., # 2110
Austin, Texas 78759
(512) 343-6116
ATTORNEY FOR APPELLANTS

APPEALED CLAIMS APPENDIX

1.   A method for identifying compatibility between two firmware images, comprising:

analyzing a control block of each of said firmware images, wherein each of said control blocks includes a firmware family code and a compatibility table of a firmware image associated with said control block;

determining if said firmware family codes of said firmware images are the same; and

evaluating said compatibility tables to determine if said firmware images are compatible in response to said determination that said firmware family codes of said firmware images are not the same, wherein each of said compatibility tables describes the a relationship between an associated firmware image and other family codes.